

NOTICE

Memorandum decisions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding authority for any proposition of law.

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

MICHAEL LEE MURPHY,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-11522
Trial Court No. 3HO-10-369 CR

MEMORANDUM OPINION

No. 6379 — September 14, 2016

Appeal from the District Court, Third Judicial District, Homer,
Margaret L. Murphy, Judge.

Appearances: Kelly R. Taylor, Assistant Public Defender, and
Quinlan Steiner, Public Defender, Anchorage, for the Appellant.
Nicholas R. Torres, Assistant District Attorney, Kenai, and
Craig W. Richards, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Suddock,
Superior Court Judge.*

Judge MANNHEIMER.

Michael Lee Murphy was convicted of sixth-degree controlled substance
misconduct (*i.e.*, possession of marijuana) after the police smelled marijuana in his

* Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska
Constitution and Administrative Rule 24(d).

backpack during a traffic stop. The police seized the backpack and applied for a warrant to search it. The ensuing search revealed a small bag of marijuana.

Murphy was found guilty at the conclusion of a bench trial in the district court. The State now concedes that Murphy's trial was illegal because (1) Murphy was entitled to trial by jury, and (2) the district court failed to address Murphy personally to ascertain that he was knowingly waiving his right to a jury trial.

See Walker v. State, 578 P.2d 1388, 1390 (Alaska 1978) (holding that a trial judge must address the defendant personally to obtain a waiver of the right to jury trial); and *McGlaufflin v. State*, 857 P.2d 366, 369 (Alaska App. 1993) (holding that "the record must explicitly demonstrate that the defendant understood and personally relinquished the right to trial by jury").

After we received the State's brief and read the State's concession of error, we independently examined the record and we concluded that the State's concession was well-founded.¹ We therefore asked the parties whether we should simply reverse Murphy's conviction on this ground, without reaching his other claims on appeal.

Murphy's attorney objected to this proposed disposition of the appeal, arguing that this Court should reach Murphy's other claims because those claims were also dispositive of the case. Accordingly, we now address Murphy's other claims on appeal: two related search and seizure claims, and a claim under the privacy clause of the Alaska constitution (Article I, Section 22).

¹ *See Marks v. State*, 496 P.2d 66, 67-68 (Alaska 1972) (requiring an appellate court to independently assess any concession of error by the State in a criminal case).

Murphy's search and seizure claims

Murphy argues that the evidence against him should be suppressed because the traffic stop was unlawful, and (alternatively) because, even if the traffic stop was legal, the police lacked probable cause to seize Murphy's backpack while they applied for the search warrant.

Murphy concedes that he failed to raise these suppression arguments in the district court. He further concedes that in *Moreau v. State*, 588 P.2d 275, 280 & n. 13 (Alaska 1978), our supreme court held that claims involving the exclusionary rule are "not appropriately raised for the first time on appeal" unless the record demonstrates a constitutional violation that is "singularly egregious". However, Murphy contends that the record in his case plainly reveals a singularly egregious violation of his Fourth Amendment rights.

We have examined the record, and we disagree. Murphy's suppression issues are therefore waived.

Murphy's claim that his possession of marijuana was protected under the privacy clause of the Alaska constitution

Murphy contends that his possession of marijuana in his backpack was protected under the privacy clause of the Alaska constitution (Article I, Section 22) as construed in *Ravin v. State*, 537 P.2d 494 (Alaska 1975), and *Noy v. State*, 83 P.3d 538, 542-43 (Alaska App. 2003).

Ravin and *Noy* hold that adults have a right to possess less than four ounces of marijuana *in their home* for personal use. Seemingly, then, *Ravin* and *Noy* offer no protection to marijuana that is carried in a backpack.

But Murphy was homeless at the time of the traffic stop, and he carried all his possessions in his backpack. Because of this, Murphy contends that the contents of his backpack were entitled to the same constitutional protections that apply to the contents of other people's homes.

Murphy attempts to frame this argument as an issue of equal protection. But, in fact, Murphy is arguing for a broader privacy protection than other people enjoy. He is essentially contending that, of all the people who might possess marijuana in a backpack or other item of closed luggage, homeless people would have a constitutional right to do so, while people who have more typical dwellings would face criminal liability for engaging in this conduct.

(Murphy's case arose under Alaska's pre-2015 marijuana laws. In the fall of 2014, the people of Alaska approved Ballot Measure No. 2, which legalized the possession and use of marijuana by adults. *See* AS 17.38. The new law took effect on February 24, 2015.)

We conclude that Murphy's argument is inconsistent with the right of privacy announced in *Ravin*.

The *Ravin* decision expressly rejected the idea that the right of privacy encompassed a fundamental right to possess marijuana. 537 P.2d at 504. Rather, the *Ravin* court focused on the unique role of the home in constitutional jurisprudence — ultimately concluding that Article I, Section 22 of the Alaska constitution guaranteed a heightened degree of privacy in the home. *Ibid*.

For purposes of Murphy's case, the crucial aspect of the *Ravin* decision is that it did *not* focus on a person's right of personal autonomy and the corresponding right to a degree of privacy in one's possessions, no matter where situated. Rather, the supreme court's analysis in *Ravin* focused on the unique constitutional status of the home in the sense of a structure or fixed physical location. *Id.* at 502-04.

Murphy was prosecuted for possessing marijuana in his backpack, and the backpack was located in a vehicle in a public place. We accordingly conclude that Murphy's possession of this marijuana was not protected under *Ravin* and *Noy*.

Conclusion

The judgement of the district court is REVERSED because of the court's failure to obtain Murphy's personal waiver of his right to jury trial. However, Murphy's possession of the marijuana in his backpack was not protected under Article I, Section 22 of the Alaska constitution.